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BEFORE THE ARIZONA CORPORATION COMMISSION

19

COMMISSIONERS

2005 DEC 12 A 8: 21

JEFF HATCH-MILLER, CHAIRMAN
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE COMPLAINT
OF BUREAU OF INDIAN AFFAIRS,
UNITED STATES OF AMERICA,
AGAINST MOHAVE ELECTRIC
COOPERATIVE, INC. AS TO SERVICES
TO THE HAVASUPAI AND HUALAPAI
INDIAN RESERVATIONS.

DOCKET NO. E-01750A -05-0579

**MOHAVE'S MOTION TO CONTINUE
AND HOLD PROCEEDINGS IN
ABEYANCE PENDING RULING BY
ARIZONA STATE COURT**

Mohave Electric Cooperative, Inc. ("Mohave"), by and through its undersigned counsel, moves this Commission to continue and hold in abeyance consideration of all legal issues raised in the Bureau of Indian Affairs' ("BIA") Complaint filed on August 9, 2005, Mohave's Answer and Motion to Dismiss the Complaint filed October 6, 2005, BIA's Opposition to Mohave's Motion to Dismiss filed October 21, 2005 and Mohave's Reply filed November 2, 2005.

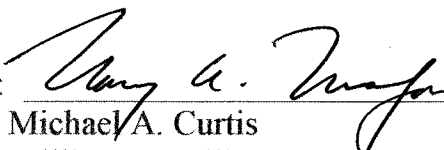
Mohave requests this abeyance for the following reason. On December 9, 2005, Mohave filed a proceeding in the Arizona Superior Court for Maricopa County under Arizona's uniform declaratory judgment act. *See*, A.R.S. §12-1831, *et. seq.* A copy of Mohave's Declaratory Judgment action is attached to this Motion as Exhibit 1. This declaratory judgment action seeks a ruling from the Superior Court that the 1982 Contract between BIA and Mohave, providing electric service to the Hualapai and Havasupai Indian Reservations, is no longer valid. Once there is a final decision from the Arizona State courts on this declaratory judgment action, Mohave anticipates the issues at the center of the

1 controversy in front of the Commission will be resolved and any remaining issues for the
2 Commission's consideration will be narrowed.

3 Although Mohave is asking the Commission to refrain from making any rulings
4 in the action before it until the State Court's declaratory ruling is final, Mohave will
5 voluntarily continue to provide service at its Nelson Substation to the BIA at the
6 Commission-approved rate in the interim period. Further, in the event of an emergency that
7 poses an imminent and substantial endangerment to the public health, safety and welfare,
8 Mohave agrees to respond to such emergency provided BIA pays the cost of such response.

9 Dated this 9th day of December, 2005.

10 CURTIS, GOODWIN, SULLIVAN,
11 UDALL & SCHWAB, P.L.C.

12 By: 
13 Michael A. Curtis
14 William P. Sullivan
15 Larry K. Udall
16 Nancy A. Mangone
17 2712 North 7th Street
18 Phoenix, Arizona 85006-1090
19 Attorneys for Mohave Electric Cooperative, Inc.

20 PROOF OF AND CERTIFICATE OF MAILING

21 I hereby certify that on this 9th day of December, 2005, I caused the
22 foregoing document to be served on the Arizona Corporation Commission by delivering the
23 original and thirteen (13) copies of the above to:

24 Docket Control Division
25 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

1 Copies of the foregoing hand delivered/mailed
2 this 9th day of December, 2005 to:
3 BT/mm

4 JEFF HATCH-MILLER, CHAIRMAN
5 COMMISSIONER WILLIAM A. MUNDELL
6 COMMISSIONER MARC SPITZER
7 COMMISSIONER MIKE GLEASON
8 COMMISSIONER KRISTIN K. MAYES
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, Arizona 85007

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13 Administrative Law Judge, Hearing Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, Arizona 85007

17 Keith Layton, Esq.
18 Counsel, Legal Division
19 ARIZONA CORPORATION COMMISSION
20 1200 West Washington Street
21 Phoenix, Arizona 85007

22 Ernest Johnson
23 Director, Utilities Division
24 ARIZONA CORPORATION COMMISSION
25 1200 West Washington Street
Phoenix, Arizona 85007

Mark J. Wenker
U.S. Attorney's Office
40 North Central, Suite 1200
Phoenix, AZ 85004-4408
Attorney for the BIA

Mary Walker

1234-7-19-1 BIA PLEADINGS/MOTION FOR ABEYANCE.DOC

EXHIBIT 1

COPY

DEC - 9 2005



MICHAEL K. JEANES, CLERK
O. CARDENAS
DEPUTY CLERK

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7 (602) 351-8000
8 *peckstein@perkinscoie.com*
9 *ccoleman@perkinscoie.com*

7 Attorneys for Plaintiff
8 Mohave Electric Cooperative Inc.

9
10 ARIZONA SUPERIOR COURT
11 MARICOPA COUNTY

12 MOHAVE ELECTRIC COOPERATIVE INC.,
13 an Arizona corporation,

14 Plaintiff,

15 v.

16 BUREAU OF INDIAN AFFAIRS,

17 Defendant.
18

No. CV2005-018954

COMPLAINT

19
20 Plaintiff Mohave Electric Cooperative Inc. ("Mohave") for its complaint alleges as
21 follows:

22 **Jurisdiction and Venue**

23 1. Mohave is a non-profit cooperative and a public service corporation organized
24 under the laws of and doing business in the State of Arizona.

25 2. The Bureau of Indian Affairs ("BIA") is an executive agency of the United
26 States of America under the U.S. Department of the Interior.

1 3. This Court has jurisdiction over the subject matter of this action under Ariz.
2 Const. Art. 6, § 14, and A.R.S. §§ 12-123 and 12-1831.

3 4. Mohave's claim for declaratory relief against the BIA is not barred by the
4 doctrine of sovereign immunity because the BIA initiated proceedings before the Arizona
5 Corporation Commission from which these proceedings arise, thereby placing the matters
6 here in controversy. To the extent that the doctrine of sovereign immunity would otherwise
7 apply, the BIA has waived sovereign immunity by filing its Complaint for relief under the
8 contract in issue with the Arizona Corporation Commission.

9 5. Venue is proper in this Court pursuant to A.R.S. § 12-401 because the Arizona
10 Corporation Commission proceedings in issue are pending in Maricopa County.

11 **The Contract In Issue**

12 6. On or about October 1, 1981, Mohave contracted with the BIA to supply
13 wholesale electricity to the BIA, which in turn resold the electricity to various customers on
14 the Hualapai and Havasupai Indian Reservations ("the "Contract"). A true and correct copy
15 of the Contract filed by BIA with its lawsuit against Mohave in front of the Arizona
16 Corporation Commission is attached at Exhibit A.

17 7. The initial term of the Contract was for ten years from the date that Mohave
18 first made electricity available to the BIA under the Contract, no later than April 1, 1982.

19 8. The Contract provided that "Mohave consents to the Government's right and
20 option to renew this contract for two (2) additional ten (10) year periods."

21 9. Mohave performed fully under the Contract during the initial ten-year term.

22 10. The initial ten-year term of the Contract expired no later than April 1, 1992.
23 Although the Contract contained a formal notice provision requiring that "[a]ll formal
24 notices, demands or requests given or made under this Contract shall be in writing and . . .
25 delivered personally or sent by registered mail, certified mail or telegram" to Mohave, the
26

1 BIA did nothing as of the date of the termination of the Contract to exercise any option to
2 renew the Contract for any additional period.

3 11. By letter dated April 19, 1993, the BIA wrote to Mohave to acknowledge that
4 "[t]he term of this contract was for ten years and has since expired." A true and correct copy
5 of this letter is attached at Exhibit B.

6 12. The BIA has alleged that its April 19, 1993, letter constituted an exercise of its
7 option to renew the Contract.

8 13. In fact, although the BIA's April 19, 1993, letter to Mohave stated that the BIA
9 wished to exercise its option to renew the Contract in issue, the letter also stated that "[p]rior
10 to exercising our option, we need to re-negotiate and amend the existing contract."

11 14. In particular, the BIA demanded that provisions of the Contract requiring the
12 BIA to pay costs for the "construction and operation of facilities to make electric service
13 available to the Government" be removed, stating that "some of this language needs to be
14 deleted." The letter concluded by stating that "the Government will propose a negotiation
15 meeting with Mohave Electric for continued electrical services under the contract."

16 15. At no time did Mohave agree to "delete" any provisions of the Contract
17 requiring the BIA to pay costs for the construction and operation of facilities, nor did
18 Mohave agree to enter into a new contract with the BIA.

19 16. The BIA has also alleged that a second letter, dated March 6, 2002, constituted
20 a second alleged extension of the Contract. In that letter, the BIA asserted that the Contract
21 had been amended "to delete the charge contained in the contract" requiring the BIA to pay
22 costs for the construction and operation of facilities. Attached to the letter was a form
23 purporting to effect a "Unilateral Modification IAW Contract Terms and Conditions." A
24 true and correct copy of the letter and attachment are attached at Exhibit C.

25 17. Mohave responded by letter dated March 20, 2002, informing the BIA that the
26 Contract had expired in 1992 and offering to negotiate a new contract with the BIA.

18. The BIA filed a Complaint with the Arizona Corporation Commission on August 9, 2005, seeking an order compelling Mohave to “continue to provide electricity and electrical distribution service . . . to the BIA *under the Contract*.” [Emphasis added]

19. This is an action for declaratory judgment pursuant to A.R.S. § 12-1831. A bona fide dispute exists between the parties as to whether the BIA validly exercised an option to renew the Contract, whether the Contract has expired, and/or whether the BIA and Mohave entered into a new contract to supply electricity.

20. The Arizona Corporation Commission lacks jurisdiction to resolve the question of whether the BIA validly exercised an option to renew the Contract and/or whether the BIA and Mohave entered into a new contract to supply electricity. *See, e.g., General Cable Corp. v. Citizens Utilities Co.*, 27 Ariz. App. 381, 386, 555 P.2d 350, 355 (Ct. App. 1976) (“the construction and interpretation to be given to legal rights under a contract reside solely with the courts and not with the Corporation Commission.”); *Trico Electric Cooperative, Inc. v. Ralston*, 67 Ariz. 358, 365, 196 P.2d 470, 474 (1948) (“Clearly the construction of a contract is a judicial function and the court, not the corporation commission, has the jurisdiction to determine the validity of said option agreement”); *Campbell v. Mountain States Telephone & Telegraph Co.*, 120 Ariz. 426, 586 P.2d 987 (Ct. App. 1978) (holding that traditional tort and contract claims are within jurisdiction of superior court rather than Commission).

21. Pursuant to Arizona law, Mohave is entitled to a declaratory judgment that the BIA did not validly exercise an option to renew the Contract, that the Contract has expired, and that the BIA and Mohave did not enter into a new contract to supply electricity.

Prayer For Relief

WHEREFORE, plaintiff respectfully requests the following relief:

A. A declaration that the BIA did not validly exercise an option to renew the Contract:

1 B. A declaration that the Contract has expired;

2 C. A declaration that the BIA and Mohave did not enter into a new contract to
3 supply electricity;

4 D. Such other and further relief as the Court deems just and equitable.

5 Dated: December 9, 2005.

6 PERKINS COIE BROWN & BAIN P.A.

7
8
9 By



Paul F. Eckstein
Christopher S. Coleman
2901 North Central Avenue
Post Office Box 400
Phoenix, Arizona 85001-0400

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13 Attorneys for Plaintiff
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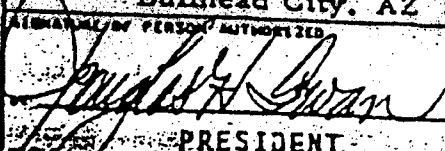
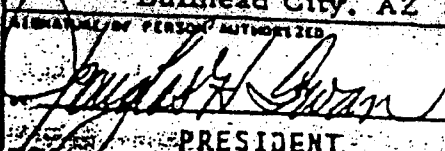
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EXHIBIT A

GENERAL SERVICES ADMINISTRATION
NEGOTIATED ELECTRIC UTILITY CONTRACT

Exhibit B
GS-005-67021

1. SERVICE LOCATION: The Contractor shall furnish to the Government all electric energy which the Government may request during the term of this contract up to 1,500 KW for the operation of its facilities located at Hualapai and Havasupai Indian Reservations, as more fully described in Addendum No. 1.
2. POINT OF DELIVERY: The Contractor shall make and pay for all connections between the systems of the Contractor and the Government at the point of delivery. The point of delivery is described as follows: Line side of Long Mesa Power Transformer, as more fully described in Addendum No. 1 and Exhibit 1.
3. SERVICE CHARACTERISTICS: Electric energy to be supplied hereunder shall be alternating current, three (3) phase, 480 volts, and shall be delivered at 60 Hz/24.9 kilowatts per hour, with allowable variation of 10 percent above or below normal. The electric energy furnished hereunder shall be metered at 24.9 kilowatts. All as more fully described in Addendum No. 1.
4. CHARGE: The Contractor shall be paid for the services herein contracted for pursuant to charges described in Addendum No. 1 which is attached and made a part hereof, commencing with the period in which electricity is initially furnished hereunder and continuing until this contract is terminated, except that the minimum charge, if any, specified in said Rate Schedule(s) shall be equitably prorated for the periods in which commencement and/or termination of this contract shall occur. All as more fully described in Addendum No. 1.
5. TERM OF CONTRACT: The term of this contract shall be for a period of 10 year(s) from the date that the Contractor makes electricity available and the Government is ready to receive electricity from the Contractor at the Service Location. The Contractor shall make every reasonable effort to commence to deliver electricity to the Government at the Service Location no later than the 15 day of April, 1982. The Government shall, as promptly as possible, advise the Contractor of the date it will be ready to receive electricity under this contract.
6. SPECIAL TERMS AND CONDITIONS: If there are any Special Terms and Conditions to this contract they are attached and identified as follows: GSA Form 1684; GSA Form 1685 (Rev. 7-76); Addendum No. 1; Exhibit 1

EXECUTION BY CONTRACTOR		DATE		EXECUTION BY GOVERNMENT		DATE	
NAME OF CONTRACTOR (Type in full) MOHAVE ELECTRIC COOPERATIVE, INC.				TITLE DEPUTY AREA DIRECTOR			
ADDRESS P. O. Box 1045 Bullhead City, AZ 86430				SIGNATURE OF CONTRACTOR 			
TYPE OF ORGANIZATION <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input checked="" type="checkbox"/> CORPORATION				TITLE (Contracting Officer)			
SIGNATURE OF PERSON AUTHORIZED 				THIS CONTRACT IS EXECUTED PURSUANT TO THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1959, 63 STAT. 377, AS AMENDED.			
TITLE PRESIDENT				ACCOUNTING AND APPROPRIATION DATA			

TERMS AND CONDITIONS

INVOICES.

Invoices for payment shall be prepared and submitted in duplicate unless otherwise specified by the Government. All invoices shall contain statements of the meter readings at the beginning and the ending of the billing period, meter constants, consumption during the billing period, and such other pertinent data as may be required to substantiate the billing or such other pertinent data as may be requested by the Government.

2. PAYMENT OF SERVICES.

(a) All bills for payment of services under this contract shall be paid without penalty or interest, and the Government shall be entitled to any discounts customarily applicable to payment of bills by any customer of the Contractor.

(b) For purposes of charges under the contract, any demands due to faulty operation of, or excessive or fluctuating voltage on, the Contractor's system shall not be included as part of the Government's demand.

(c) Payments hereunder shall not be made in advance of services rendered. The Government shall, however, use due diligence to effect payment of all bills for services rendered under this contract within thirty (30) days from the date such bills are received.

(d) Nothing herein contained shall be construed as binding the Government to expend in any one fiscal year any sum in excess of the appropriation made by Congress for that fiscal year in furtherance of the subject matter of this contract or to involve the Government in any contract or other obligation for the further expenditure of money in excess of such appropriation.

3. DAMAGE AND INJURY.

The Government shall in no event be liable or responsible for damage or injury to any person or property occasioned through the use or operation of the Contractor's facilities or the action of the Contractor, its employees and agents in performing under this contract.

4. ACCESS TO SERVICE LOCATION.

(a) The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to the limitations specified in this contract, a revocable permit to enter the Service Location for any proper purpose under this contract, including use of site or sites agreed upon by the parties hereto for the installation, operation, and maintenance of the facilities of the Contractor. Authorized representatives of the Contractor will be allowed access to the facilities of the Contractor and the Government at suitable times to perform the obligations of the Contractor with respect to such facilities. It is expressly understood, however, that proper military or Governmental authority may limit or restrict the right of access herein granted in any manner considered by such authority to be necessary for the national security.

(b) The Contractor shall, at its expense, obtain all rights of way and easements necessary to permit it to perform under this contract.

SUPPLEMENTAL PROVISIONS
UTILITY SERVICE CONTRACT

1. DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

(a) The term "head of the agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; and the term "any authorized representative" means any person or persons authorized (other than the Contracting Officer) to act for the head of the agency or the Secretary.

(b) The term "Contracting Officer" means the person designated in the contract as the Contracting Officer, or any other officer or employee designated in writing as a duly designated Contracting Officer, and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "subcontract" includes purchase orders under this contract.

2. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

(a) This clause is applicable if the amount of this contract exceeds \$2,500 and was entered into by means of negotiation, including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this contract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Acquisition Regulation Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(c) The Contractor further agrees to include in all his subcontracts a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Acquisition Regulation Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$2,500 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(d) The periods of access and examination described in (b) and (c), above, for records which relate to (1) appeals under the "Disputes" clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract or its subcontracts, and (3) any other litigation or settlement which has been taken or is being taken, shall be extended until the final disposition of such litigation or settlement.

3. EQUAL OPPORTUNITY

(The following clause is applicable unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, ch. 60).)

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, promotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The Contractor will not permit any subcontractor to discriminate on the basis of race, color, religion, sex, or national origin. It is the policy of the Government to ensure that the provisions of this Equal Opportunity clause

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. However, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to (1) contracts, (2) subcontracts, and (3) agreements with applicants who are themselves performing federally assisted construction contracts, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause.)

By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause. He agrees that he will not permit any subcontractor to discriminate on the basis of race, color, religion, sex, or national origin. It is the policy of the Government to ensure that the provisions of this Equal Opportunity clause

* A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements to others is prescribed in 18 U.S.C. 1001.

5. OFFICIALS NOT TO BENEFIT

any benefit that may be derived from the use of the information contained in the report is intended to be for the general benefit of the community.

6. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

7. CONVICT LABOR

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and Executive Order 11755, December 29, 1973.

8. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—
OVERTIME COMPENSATION

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 - 333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

[illegible]

(b) Contractor Liability for Unpaid Wages and Liquidated Damages. In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek at forty hours without payment of the overtime wages required by paragraph (a).

(c) Withholding for security matters and facilities and equipment. The Contracting Officer may withhold from the Government funds payable to the Contractor from any payments due to the Contractor for work performed by the Contractor or subcontractors, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid taxes and obligated amounts as provided in the provisions of paragraph (b).

(d) **Subcontracts.** The Contractor shall insert paragraphs (a) through (f) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) **Records.** The Contractor shall maintain payroll records con-

9. DISPUTES

(b) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive, unless within 30 days from the date of receipt of such copy the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Contracting Officer. The Contracting Officer shall have the right to suspend or discharge any contractor or subcontractor for failure to comply with the provisions of this contract. The Contracting Officer shall have the right to suspend or discharge any contractor or subcontractor for failure to comply with the provisions of this contract. The Contracting Officer shall have the right to suspend or discharge any contractor or subcontractor for failure to comply with the provisions of this contract.

Contractor shall not be held fraudulent, or capricious, or otherwise liable, and need not necessarily imply bad faith, and is supported by substantial evidence, in connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(h) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(c) The provisions of (a) above shall not apply to disputes which are subject to the jurisdiction of a Federal, State, or other appropriate regulatory body. The provisions of (a) above shall also be subject to the requirements of the law with respect to the rendering of utility services and the collection of regulated rates.

10. ORDER OF PRECEDENCE

To the extent of any inconsistency between the provisions of this contract and any schedule, rider, or exhibit incorporated in this contract by reference or otherwise, or any of the Contractor's rules and regulations, the provisions of this contract shall control.

11. DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

(This clause is applicable pursuant to 41 CFR 60-250 if this contract is for \$10,000 or more.)

(a) The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disabled status as stated in its employment practices such as the following: employment, including promotion or transfer, recruitment, advertising, hiring, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The contractor agrees that all suitable employment openings at the contractor's establishment are one of the execution of this contract and that the contractor is using the performance of this contract including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (d) and (e).

(c) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the listing of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding non-discrimination in employment.

(d) The reports required by paragraph (b) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one place of business in a State, with the central office of that State employment service. Such reports shall indicate

(1) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by terms of the Vietnam Era Veterans Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

(b) In complying with paragraph (a) of this clause and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns" the Contractor in placing his subcontracts shall observe the following order of preference: (1) Certified-eligible concerns with a first preference which are also small business concerns; (2) other certified-eligible concerns with a first preference; (3) certified-eligible concerns with a second preference which are also small business concerns; (4) other certified-eligible concerns with a second preference; (5) persistent or substantial labor surplus area concerns which are also small business concerns; (6) other persistent or substantial labor surplus area concerns.

15. EMPLOYMENT OF THE HANDICAPPED

(a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, as amended.

(c) In the event of any contract or subcontract which involves the employment of handicapped individuals, the contractor shall be in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, as amended.

(d) The contractor agrees to post notices, readily available to employees and applicants, in the contractor's office, to be provided by the Director, Office of Federal Contract Compliance Programs, Department of Labor, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(e) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of section 503 of the Act and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(f) The contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.

17. CLEAN AIR AND WATER

(Applicable only if the contract exceeds \$100,000, or the contracting officer has determined that orders under an indefinite quantity contract in any one year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by the EPA, or the contract is not otherwise exempt.)

(a) The Contractor agrees as follows:

(1) To comply with the requirements of section 114 of the Clean Air Act (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 304 of the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.

(3) To use his best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed.

(4) To insert the substance of the provisions of this clause into any nonexempt subcontract, including this paragraph (a)(4).

(5) The terms used in this clause have the following meanings:

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604).

(2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et seq., as amended by Public Law 92-500).

(3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

(5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor or subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

ADDENDUM NO. 1

TO

GSA CONTRACT NO. GS-00S-67021

MOHAVE ELECTRIC COOPERATIVE, INC., an Arizona corporation, (hereafter called "Mohave"), agrees to Contract with the UNITED STATES OF AMERICA, acting through the Administrator of the General Services Administration on behalf of the U.S. Bureau of Indian Affairs, Department of the Interior, (hereinafter called "Government"), to supply electric energy to serve existing and future residential and commercial installations on the Hualapai and Havasupai Indian Reservations located north of Route 66 on and adjacent to the Supai Road, Coconino County, Arizona. The electrical service fee is to be paid by the U. S. Bureau of Indian Affairs, Department of the Interior.

LOCATION OF PROPOSED SERVICE

Mohave shall construct a power line from its existing facilities, a distance of approximately 70 miles, to a point of termination at the line side at the Long Pasa Power transformer, which shall be the point of delivery. This transmission line and line extension shall be constructed along the right-of-way which is set forth on the existing plant marked as Exhibit "I" attached hereto.

Mohave agrees that the Government may elect to serve the Hualapai Reservation by means of other interconnects and line extensions which shall be constructed for the U. S. Government by separate agreement with Mohave, upon such terms that provide to Mohave its total investment required to make such an extension; and further provided, that such load of additional

extensions do not exceed the maximum of damage provided on page 3 of this Agreement.

Construction of the lines and facilities shall be in accordance with Rules for the Installation and Maintenance of Electric Supply Stations and Equipment, Part I of the National Electrical Safety Code, latest edition, as published by the Institute of Electrical and Electronic Engineers, Inc. (IEEE). Materials and equipment shall meet NEMA, ANSI and REA standards.

SERVICE CHARACTERISTICS

Electric service to be supplied shall be in the form of three-phase, 60 Hertz at a nominal voltage of 14.4/24.9 kilovolts and shall be metered at 24.9 kilovolts primary, with all metering facilities to be furnished by Mohave on the 24.9 kilovolt side of the Government substation, and metering facilities shall provide kilowatt hours, recorded kilowatt demand on a 15-minute integrated basis, recorded KVAR flow or power factor, and other information as required.

RIGHT OF ACCESS

For the purpose of constructing, inspecting, maintaining or operating the facilities, duly authorized representatives of Mohave shall have the right of ingress to and egress from the Government's premises at all reasonable times.

FACILITIES

The Government shall provide a suitable location for Mohave's metering and other facilities, in the area of the point of delivery and shall supply, install, operate and maintain the necessary sub-station and other facilities required for the receipt of electric power and energy at 24.9 kilovolts beyond the point of delivery as herein described.

A generating plant located at the rim of the Grand Canyon overlooking the Havasupai Reservation may be utilized by the Government to provide emergency power to the Havasupai Reservation in the event of a power outage on Mohave's system. Switching arrangements shall be provided by Mohave to insure that this emergency power plant shall not backfeed into the Mohave system.

MAXIMUM DEMAND

Mohave agrees to supply or make available a minimum of 500 kW up to a maximum of 1500 kW as the Government's total capacity rights for the term of this Agreement or life of the facilities whichever is first to occur, in return for the Government's agreement to pay Mohave a monthly Facility Charge. Government agrees that its capacity rights are limited to a maximum of 1500 kW.

CONTINUITY OF SERVICE

In the supply of electricity, considering the nature of a 70 mile radial 14.4/24.9 kV distribution line, Mohave shall use reasonable diligence to provide a constant and uninterrupted supply of electric power and energy hereunder. If the supply of electric power and energy shall fail or be interrupted, or become defective through act of God, Governmental authority, action of the elements, public enemy, accident, strikes, organized or unorganized interference of any kind, labor trouble, required maintenance work, inability to secure right-of-way, or any other cause beyond the reasonable control of Mohave, Mohave shall not be liable for such failure or interruption or for damages, consequential or otherwise, Mohave shall use its best efforts to give the Government reasonable notice as to any planned outages and/or duration of outages should such be known to be of longer than four hours duration.

When any such failure, suspension, diminution or variation of supply due to any such cause shall be less than fifteen (15) consecutive days, no equitable adjustment shall be made in the monthly Facility Charge in the applicable rate schedule or monthly Facility Charge; provided further, however, that if any such failure, suspension, diminution, or other variations of supply occasioned by such causes shall be fifteen (15) or more consecutive days, Mohave shall suspend its billing under this Contract and an equitable adjustment shall be made in the monthly Facility Charge effective with the beginning of the next ensuing billing period. (For the purposes of this paragraph, an "equitable adjustment" is the reduction of the monthly Facility Charge by 1/30th for each additional consecutive day (beyond the fifteen (15) days mentioned above) service is not provided).

In the event the Government's distribution facilities from Long Mesa into the Havasupai Village are not operable in whole or part for any cause beyond its reasonable control, including, but not limited to, acts of God or of the public enemy, fires, floods, earthquakes or other catastrophes, or strikes for a period in excess of fifteen (15) consecutive days, Mohave shall suspend its billing under this Contract (except for monthly Facility Charge) for a period reasonable required to replace or repair the Government Facilities, or otherwise to resume regular operations.

OWNERSHIP OF FACILITIES

All facilities to be provided by or on behalf of Mohave shall be and remain its sole property. All facilities to be provided by the Government beyond the point of interconnection shall be and remain its sole property.

RESPONSIBILITY AS TO USE OF SERVICE FACILITIES

Each party shall coordinate, install and maintain compatible protective devices on its side of the interconnection to protect its system from adverse conditions on the system of the other party. The Government will exercise due diligence to operate its system in accordance

with the standards of modern practice and in a manner which will not cause any system problems, jeopardize Mohave's transmission system, or cause Mohave to make system improvements on Mohave's electric system which, in the judgment of Mohave and the Government, would not otherwise be necessary.

Mohave and the Government will each assume all responsibility on their respective sides of the point for the electric services supplied to the Government hereunder, as well as for any apparatus used in connection with such supply, including the Long Mesa Generating Plant and its associated equipment.

The Government will exercise due diligence to assure that the electrical characteristics of the load, such as deviation from sine wave or unusual short interval fluctuations in demand, shall not be such as to result in impairment of service to other customers of Mohave, or in interference with operation of telephone, television or other communication facilities. In this regard, the deviation from phase balance will be limited to a reasonable percentage of contract demand at all times.

RELOCATION OF FACILITIES

In the event the Government requires any power lines or other facilities to be moved for any reason after initial construction, Mohave agrees to relocate such facilities upon reasonable written request by the Government, the expense of such relocation shall be borne by the Government, and shall be made separate and distinct from construction costs incorporated in this Agreement.

ACQUISITION OF RIGHT-OF-WAY

Mohave shall obtain all necessary right-of-way, including property under Federal and state jurisdiction, and shall prepare an environmental report applicable for the proposed facilities and power lines.

JOINT USE OF POWER FACILITIES

Mohave understands that the Arizona Telephone Company provides telephone service to the area involved, and that joint use of telephone power facilities, where appropriate, and inductive coordination will be the responsibility of the Arizona Telephone Company and Mohave.

CONSTRUCTION COSTS

Mohave estimates that the Construction of all facilities will be as follows:

For labor and material for overhead transmission and/or distribution facilities from Mohave's source of supply to the Long Mesa Generating Plant:
\$1,600,000.00

Under this proposal, Mohave will provide all funds necessary for the construction of the aforementioned facilities.

FACILITIES CHARGES

For Mohave to recover costs associated with the construction and operation of facilities to make electric service available to the Government, the Government, upon verification of Mohave's cost of construction agrees to pay Mohave as a Facility Charge an annual amount equal to the sum of:

- (1) 4.40% (percent) of the lesser of the cost of construction or \$1,600,000 and/or other amount(s) incurred in by the Government Contracting Officer;
- (2) All state and local property taxes assessed against the facilities that Mohave constructs because of this contract;
- (3) The (a) operation and maintenance expenses, (b) cost of replacements less original book value of

replaced facilities and (c) cost of system improvements that Mohave constructs as a result of this Contract.

One Twelfth of the Facility Charge shall be paid each month. The first payment shall be due and payable when electric power and energy become available. Mohave consents to the Government's right and option to renew this Contract for two (2) additional ten (10) year periods.

TERMINATION PROVISIONS

If the Government does not exercise its renewal option or terminates this Contract, the Government shall pay, in U. S. currency, in a single payment, an amount equal to Mohave's undepreciated value plus facility removal costs, less salvage value, of the facilities that Mohave constructs because of this contract.

If Mohave terminates this Contract without legal cause, the Government shall be liable only for the Facility Charge payment and actual energy used up to the effective date of the termination.

If the Government shall fail to make any contract payment within fifteen (15) days after such payment is due, Mohave may discontinue service to the Government upon giving fifteen (15) days written notice to the Government of its intentions to do so; provided, however, that such discontinuance of service shall not relieve the Government of any of its obligations under this Contract.

INTERIM CONSTRUCTION ACCOUNTING

The Government Contracting Officer or his authorized representative may, at any time, have Mohave's invoice(s) or voucher(s) and/or statement of costs representing costs related to the construction of the subject facilities audited. The amount of construction costs to be included in the Facility Charge shall be subject to reduction for amounts included in

the related invoice(s) or voucher(s) or statement of costs which are found by the Contracting Officer or his authorized representative on the basis of audit, not to constitute allowable costs. The cost referred to herein shall be allowable, allocable and reasonable to this Contract and consistent with sound and generally accepted accounting principles.

If, at any time, Mohave has reason to believe that the total cost of the subject facilities will be greater than the estimated \$1,600,000.00, Mohave shall notify the Contracting Officer giving its revised estimate.

The Government shall not be obligated to pay Facility Charges for those facilities based on a figure in excess of the estimated \$1,600,000.00, unless and until the Contracting Officer shall notify Mohave, in writing, that such estimated cost has been increased and shall have in such notice specified the modified estimated cost. No notice, communication or representation of any person other than the Contracting Officer shall effect an increase in the \$1,600,000.00 estimated cost of facilities, regardless of the reasons for increasing said costs.

MONTHLY FACILITY CHARGES AND RATES

The Government shall pay Mohave the monthly Facility Charge and, in addition, shall pay Mohave power rates according to Mohave's Rate Schedule "L" (Large Power) marked Exhibit "2", attached. The Exhibit by this reference is incorporated herein.

Billings pertaining to both the Facility Charge and Exhibit 2 may be increased by an amount equal to the sum of applicable taxes, fees, assessments or other charges not provided for in either the Facility Charge or Exhibit 2.

USE OF SERVICE

The Government shall utilize the electric energy supplied under this Contract only in connection with the needs of the respective Indian tribes or their customers or for such other uses as may be required by the

diversal, expansion or extension of the needs related thereto.

The Government agrees that Mohave may elect to serve the Hualapai Indian Reservation upon its own arrangements from the utility plant proposed to be constructed provided that contemplated system capacities are not unreasonably exceeded. Mohave agrees that for any extension from facilities provided by Mohave, Mohave shall credit a one-time charge of \$50.00 per connected kVA installed capacity, but not less than \$500.00, to the Government and shall deduct this amount from its next monthly billing. The Government shall have the option to waive all or any portion of any such fees.

NOTICES

All formal notices, demands or requests given or made under this Contract shall be in writing and shall be deemed properly given or made if delivered personally or sent by registered mail, certified mail or telegram to the person designated below:

NOTICE TO MOHAVE:

Mohave Electric Cooperative, Inc.

P. O. Box 1045

Bullhead City, Arizona 86430

attention: General Manager

NOTICE TO GOVERNMENT:

Assistant Area Director of Administration.

Bureau of Indian Affairs

U. S. Department of Interior

P. O. Box 7007

Phoenix, Arizona 85011

APPROVALS AND CONTINGENCIES

Mohave shall obtain from state and Federal authorities or agencies as may have jurisdiction, the necessary approval of the Contract or matters with respect thereto, of all franchises, authorizations, permits, licenses, certificates of public convenience and necessity, right-of-way and orders to the extent required by law in order to enable it to perform all of its obligations hereunder. Mohave shall not be obligated to commence construction of any facilities until it has obtained all such approvals and shall have received assurance from the Government that it will be given ingress and egress rights for the construction, operation, and maintenance of said facilities.

Mohave agrees to seek a loan with an interest rate of no more than two (2) percent per annum in an amount sufficient to build the facilities Mohave constructs as a result of this contract. Mohave shall not be obligated under this contract until it has obtained such loan to be amortized over a thirty (30) year period. This Contract shall not become effective until it has been approved in writing by the Rural Electrification Administration and accepted by the Arizona Corporation Commission.

ASSIGNMENT OF AGREEMENT

This Agreement shall be binding upon and inure to the benefit of the successors, legal representatives and assigns, of the respective parties hereto.

REGULATORY AUTHORITY

The electric services furnished under this Contract shall be subject to regulation in the manner and to the extent prescribed by any federal, state or local regulatory commission having jurisdiction over the supply of electric services to Mohave's customers generally.

MOHAVE ELECTRIC COOPERATIVE, INC.

Rate Schedule "L"

(Large Power)

Availability:

1. Available to commercial and industrial type consumers who require more than 50 KVA of transformer capacity within the utility's service area.

1. Alternating current, single or three phase, 60 Hertz, at available primary or secondary voltages.

Net Rate/Month: (or part thereof/service)

Demand Charge: \$6.90 /KW

Energy Charge:

All KWH/Month @ \$.017 /KWH

The total demand charges/month plus the energy charges/month shall be the total charges/month.

Minimum Monthly Charges:

The monthly minimum charge shall be the highest of the following:

1. Minimum monthly charge established in accordance with the utility's Line Extension Policy.
2. Or, \$1.50 /KVA/month of installed transformer capacity.

Metering:

1. The utility shall install suitable demand and power factor metering instrumentation for billing under this schedule. No consumer shall be placed on this schedule without demand metering.

Billing Demand:

1. The billing demand shall be the maximum Kilowatt demand established by a consumer for any Fifteen (15) minute period during the billing month.

Power Factor Adjustment:

1. The utility may increase the measured KW of demand one (1) percent for each one (1) percent the power factor is less than 90%.

Primary Service:

1. Primary electric service is available at primary distribution voltages.
2. Primary service metered at primary voltages, the Kilowatthour consumption shall be the metered KWH. Metering at secondary voltages, the KWH billed shall be the metered KWH plus 5% (X1.05) to allow for transformer losses.

Terms of Payment:

1. The charges per month in the foregoing rate are net, and are due and payable within ten (10) days from the date on the monthly bill.

Taxes:

1. Billing under this schedule may be increased by an amount equal to the sum of applicable taxes, fees, or charges (exclusive of Ad Valorem, State and Federal income taxes) payable by the utility and levied or assessed by any governmental authority on the public utility service rendered, or on the right or privilege of rendering the service, or on any object or event incidental to the rendition of the service.

Fuel & Purchased Power Cost Adjustment:

1. The utility may, if the purchased power expense is increased or decreased above or below the base power cost of \$0.2106 /KWH sold, flow through to the user such increases or decreases.

Conditions of Service:

1. The consumer, rates and schedules shall be subject to the rules and regulations of the Cooperative.
2. The consumer's electric wiring facilities shall conform to the Cooperative's, City, State, and National electric codes.
3. The consumer shall not resell or share electric service with others.
4. The consumer shall be allowed to consume the kilowatts (KW) or kilowatthours (KWH), at the applicable rate herein, for the monthly minimum charge.
5. Electric service under this rate schedule shall require the consumer to execute a contract.

This rate schedule was approved by the Arizona Corporation Commission in open meeting held in Phoenix on December 20, 1976. It supersedes all previous rate schedules.

Effective January 1, 1977

EXHIBIT 2

EXHIBIT B

Branch of Acquisition. Federal Assistance
Section IV/ Contracts & Grants/AS-211

APR 19 1993

CERTIFIED RETURN RECEIPT REQUESTED

Mr. Robert Broz, General Manager
Mohave Electric Cooperative, Inc.
P.O. Box 10-5
Bullhead City, Arizona 86430

Dear Mr. Broz:

This is regarding GSA Contract No. GS-00S-67021. Negotiated Electric Utility Contract between Mohave Electric Cooperative, Inc. and the Bureau of Indian Affairs (Government).

On April 1, 1982, the Government entered into Contract No. GS-00S-67021 with Mohave Electric Cooperative, Inc. to furnish the Government all electric energy which the Government may request during the term of this contract. Said services was to supply electric energy to existing and future residential and commercial installations on the Hualapai and Havasupai Indian Reservation located in Northeastern Arizona. The term of this contract was for ten years and has since expired.

Under the Contract, the Government has the right of renewal for two additional ten year periods. The Government hereby notifies Mohave Electric of its intent to exercise this option.

Prior to exercising our option, we need to re-negotiate and amend the existing contract. The contract makes reference to construction of overhead transmission and/or distribution facilities. Construction was completed and the Government reimbursed Mohave all cost associated with the construction. Therefore, some of the provisions in the contract are no longer applicable.

Provisions in the contract relative to the monthly facility charge, allows for Mohave to recover cost associated with the construction and operation of facilities to make electric service available to the Government, the Government upon verification of Mohave's cost of construction agrees to pay Mohave as a Facility Charge an annual amount equal to the sum of:

- (1) 4.44% (percent) or the lesser of the cost of construction or \$1,600,000 and/or other amount(s) concurred by the Government Contracting Officer;
- (2) All state and local property taxes assessed against the facilities and Mohave constructs because of this contract;

- (3) The (a) operation and maintenance expenses, (b) cost of replacement less original book value of replaced facilities and (c) cost of system improvements that Mohave constructs as a result of this contract."

Also, under provision "Interim Construction Accounting" the Government has the right to audit all construction costs related to the construction of the subject facilities.

The Government hereby notifies Mohave Electric of its intention to exercise its right under the contract to verify and audit all construction cost and monthly facility charges. This audit will be coordinated through the U.S. Department of Interior, Office of Inspector General. Mohave Electric will receive proper notification of any audit arrangements.

The Government will propose a replacement contract with Mohave Electric for continued electrical services under the contract.

If you have any questions, please call the Rose Velarde, Contracting Officer, at (602) 379-6760.

Sincerely,

Rose M. Velarde
1420-3223-0793
Contracting Officer

cc: PAO Facility Manager/MS-220
Director, Facilities Management and Construction Center
Attention: Mr. Richard Crissler
Facility Manager, Truxton Canon Agency
Supt., Truxton Canon Agency
Eddie Quotskuyva, Supervisory Contract Specialist

EXHIBIT C



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WESTERN REGIONAL OFFICE
210 N. 1ST AVE.
PHOENIX, ARIZONA 85001

Branch of Acquisition and
Federal Assistance, MS-210
602/379-6760

March 6, 2002

CERTIFIED MAIL NO. 7000 1530 0000 1277 3949
RETURN RECEIPT REQUESTED

Mr. Robert Broz, General Manager
Mohave Electric Cooperative, Inc.
P.O. Box 1045
Bullhead City, Arizona 86430

Dear Mr. Broz:

Reference GSA Contract No. GS-00S-67021, Negotiated Electric Utility Contract (the Contract) between Mohave Electric Cooperative, Inc. (MEC) and the Bureau of Indian Affairs (the Government).

In accordance with the Contract, the Government exercises its option to extend the contract for a ten year period from April 1, 2002 through March 31, 2012.

The Government's exercise of its option as described above does not constitute a waiver, and the Government expressly reserves any potential claims the Government may have concerning MEC's past and future billings and the Government's past and future payments under the Contract. Some of these potential claims were noted in the Inspector General's Audit Report No. 95-B-1045, "Review of Mohave Electric Cooperative, Inc., Calendar Year 1994 Charges Under Bureau of Indian Affairs Contract No. GS-00S-67021" (June 1995), previously provided to MEC.

The Government's understanding of the status of some of the component parts of charges and payments under the Contract are as follows:

1. Subsequent to the original making of the Contract, as of 1991, the Government paid in full to MEC the cost of the construction of the facilities built to deliver power from MEC to the Government at the line side of the Long Mesa Transformer. Accordingly, the Contract was amended through the above described conduct of MEC and the Government to delete the charge contained in the contract at Addendum No. 1, p. 6, paragraph "FACILITIES CHARGES," subparagraph "(1)".
2. No payment is owed by the Government to MEC for the charge described in the Contract at addendum No. 1, p. 6, paragraph "FACILITIES CHARGES," subparagraph "(2)" until MEC provides the Government with properly supported invoice documenting those charges.
3. No payment is owed by the Government to MEC for the charge described in the Contract at Addendum No. 1, p. 6, paragraph "FACILITIES CHARGES," subparagraph "(3)" until MEC provides

OPTIONAL FORM NO. 10 (7-99)

FAX TRANSMITTAL

of pages: 5

To: <u>Nand Jackson</u>	From:
Dept./Agency:	Phone #:

08/02/02 FRI 16:35 [TX/RX NO 9277]

the Government with properly supported invoices documenting those charges.

Pursuant to paragraph 2 of the Contract, MEC's point of delivery to the Government is the line side of the Long Mesa Transformer. The Government has been advised and thus suspects that MEC moved the metering device from the line side of the Long Mesa Transformer to MEC's Nelson substation. If this is the case, MEC has unilaterally changed the point of metering and billing from the Nelson substation and submits that MEC is required to meter and bill the Government's use at the line side of the Long Mesa Transformer as required by the Contract.

The Government has been advised and thus suspects that MEC serves, in addition to the Government, approximately fourteen additional customers located between the Nelson substation and the line side of the Long Mesa Transformer. The Government has been advised and thus suspects that MEC deducts from the Government's monthly bill what MEC unilaterally calculates as being the electrical usage for these other fourteen MEC customers. If the Government's suspicions described are correct, the Government suspects that MEC may have charged in the past and may be now charging the Government: costs of power losses that occur in the seventy mile electrical line; costs of power losses that occur in service lines that deliver power to MEC's other fourteen customers between MEC's Nelson substation and Long Mesa; costs of any un-metered power such as jumped meters, etc. The Government expects MEC to address, under the terms of the Contract and to the Government's satisfaction, these and other issues that have arisen or that may arise during the term of the exercised option to the Contract.

The Government requests MEC to provide the Government, within thirty (30) calendar days of the date of this letter, a written explanation of MEC's monthly charges to the Government with reference to MEC's rate schedule approved by the Arizona Corporation Commission. A full explanation of how MEC calculated its charges to the Government for the most recent month is requested with particular attention to the monthly service charge; the monthly demand charge per KW; and the energy charge per KWH.

If additional information or assistance is needed, please contact this office at (602) 379-6760.

Sincerely,

(Sgd) Lloyd M. Brewer

Contracting Officer

Enclosure

cc: WRO, Regional Director
Supt., Truxton Canon Field Office
Facilities Management, Attn: Ralph Esquerre
Field Solicitor's Office, Attn: Daniel L. Jackson
Augustine Hanna, Navasota Tribal Chairman
Daniel C. Shiel, Robinson, Donatelli, Hughes, Dahlstrom, Schoenburg & Enfield, LLP
Louise Benson, Gualala Tribal Chairperson

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES
			1 1
2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (if applicable)
1	04/01/02		
6. ISSUED BY	7. ADMINISTERED BY (if other than item 6)	CODE	
Bureau of Indian Affairs - Western Regional Office Acquisition & Federal Assistance 400 N. 5th Street, Phoenix, Az 85004 P.O. Box 10, Phoenix, Az 85001	Renee Holly, Contract Specialist Phone: 602.379.3822 FAX: 602.379.6763		
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)		(X) 9A. AMENDMENT OF SOLICITATION NO.	
Mohave Electric Cooperative, Inc. P.O. Box 1045 Bullhead City, Arizona 86430			
		9B. DATED (SEE ITEM 11)	
		10A. MODIFICATION OF CONTRACT/ORDER NO.	
		GS-008-67021	
		X 10B. DATED (SEE ITEM 11)	
		04/01/02	
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS			
<input type="checkbox"/> The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of offers <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 9 and 10, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.			
12. ACCOUNTING AND APPROPRIATION DATA (if required)			
13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.			
CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.		
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, contract order number, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103B.		
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF _____		
X	D. OTHER (Specify type of modification and authority) Unilateral Modification (AW Contract Terms and Conditions)		
E. IMPORTANT: Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.			
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Issued by UCF under heading including solicitation/contract number where feasible.) Electric Utility Contract to Provide Electric Energy for the Operation of Government Facilities Located at Hualapai and Havasupai Indian Reservations, Arizona. This modification is issued to exercise the Government's option to extend the contract performance period an additional 10 years in accordance with the Contract Terms and Conditions. Performance Period - FROM: April 1, 2002 THROUGH: March 31, 2012			
Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.			
15A. NAME AND TITLE OF SIGNER (Type or print)		15B. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
		Lloyd M. Brewer, Contracting Officer	
15B. CONTRACTOR/OFFEROR		15C. DATE SIGNED	
(Signature of person authorized to sign)		15D. UNITED STATES OF AMERICA	
		Lloyd M. Brewer (Signature of Contracting Officer)	
		15E. DATE SIGNED	
		3-5-02	

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, CHAIRMAN
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE COMPLAINT
OF BUREAU OF INDIAN AFFAIRS,
UNITED STATES OF AMERICA,
AGAINST MOHAVE ELECTRIC
COOPERATIVE, INC. AS TO SERVICES
TO THE HAVASUPAI AND HUALAPAI
INDIAN RESERVATIONS.

DOCKET NO. E-01750A-05-0579

**[PROPOSED] ORDER TO CONTINUE
AND HOLD PROCEEDINGS IN
ABEYANCE PENDING RULING BY
ARIZONA STATE COURT**

On December 9, 2005, Mohave Electric Cooperative, Inc. ("Mohave"), filed a proceeding in the Arizona Superior Court for Maricopa County under Arizona's uniform declaratory judgment act. *See*, A.R.S. §12-1831, *et. seq.* This declaratory judgment action seeks a ruling from the Superior Court that the 1982 Contract between the Bureau of Indian Affairs' ("BIA") and Mohave, providing electric service to the Hualapai and Havasupai Indian Reservations, is no longer valid.

IT IS THEREFORE ORDERED that the consideration of and any decisions on all legal issues raised in Complaint filed by BIA on August 9, 2005, Mohave's Answer and Motion to Dismiss the Complaint filed October 6, 2005, BIA's Opposition to Mohave's Motion to Dismiss filed October 21, 2005 and Mohave's Reply filed November 2, 2005, will

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1 be continued and held in abeyance until a final decision has been rendered by the Arizona
2 state courts on Mohave's declaratory judgment action.

3 Dated this _____ day of December, 2005.

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5
6 TEENA WOLFE
ADMINISTRATIVE LAW JUDGE
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